

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
EASTERN DIVISION

RICKY DEWAYE SMITH,)
)
Plaintiff,)
)
v.) CIVIL ACTION NO. 3:07cv965-MEF
)
TOMMY BOSWELL, *et al.*,)
)
Defendants.)

RECOMMENDATION OF THE MAGISTRATE JUDGE

On 26 October 2007, Plaintiff filed this 42 U.S.C. § 1983 (2000) action against Defendants. On 2 November 2007, this Court ordered Plaintiff to file an Amended Complaint because the Complaint suffered from fatal defects. (Doc. #6). On 14 November 2007, Plaintiff filed his Amended Complaint. (Doc. #8). On 25 January 2008, Defendants filed a Motion to Dismiss. (Doc. #24). On 8 February 2008, this Court ordered Plaintiff to show cause as to why Defendants' Motion to Dismiss should not be granted. (Doc. #26). Plaintiff failed to comply with the Order. On 27 March 2008, this Court ordered Plaintiff to show cause as to why the Motion to Dismiss should not be granted, on or before 4 April 2008. (Doc. #30). In its Order, the Court warned Plaintiff that failure to respond would result in this Court's recommendation that Plaintiff's case be dismissed for want of prosecution and failure to comply with the orders of the Court. *Id.* To date, Plaintiff has failed to file a response to the Motion. The Court concludes this case should be dismissed because Plaintiff has failed to comply with the orders of this Court and prosecute this action.

Accordingly, it is the RECOMMENDATION of the Magistrate Judge that this case be DISMISSED with prejudice for Plaintiff's failures to prosecute this action properly and to comply with the orders of this Court. The Magistrate Judge also RECOMMENDS Defendant's Motion to Dismiss (Doc. #24) be DENIED as MOOT. It is further ORDERED that the parties are DIRECTED to file any objections to the Recommendation on or before **22 April 2008**. Any objections filed must specifically identify the findings in the Magistrate Judge's Recommendation to which the party objects. Frivolous, conclusive or general objections will not be considered by the District Court. The parties are advised that this Recommendation is not a final order of the court and, therefore, it is not appealable.

Failure to file written objections to the proposed findings and recommendations in the Magistrate Judge's report shall bar the party from a *de novo* determination by the District Court of issues covered in the report and shall bar the party from attacking on appeal factual findings in the report accepted or adopted by the District Court except upon grounds of plain error or manifest injustice. *Nettles v. Wainwright*, 677 F.2d 404 (5th Cir. 1982). See *Stein v. Reynolds Securities, Inc.*, 667 F.2d 33 (11th Cir. 1982). See also *Bonner v. City of Prichard*, 661 F.2d 1206 (11th Cir. 1981) (*en banc*), adopting as binding precedent all of the decisions of the former Fifth Circuit handed down prior to the close of business on September 30, 1981.

Done, this 9th day of April, 2008.

/s/ Wallace Capel, Jr.
WALLACE CAPEL, JR.
UNITED STATES MAGISTRATE JUDGE